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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,346	09/13/2004	George Manak	76385.0015	5345
29952                      7590                      02/18/2010 SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
02/18/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/711,346

**Applicant(s)**

MANAK ET AL.

**Examiner**

Lien T. Tran

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-25 and 28-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 is/are allowed.
- 6) ☒ Claim(s) 15-17, 19-23 and 28-32 is/are rejected.
- 7) ☒ Claim(s) 24 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The 102 rejection of claim 28 over Huber et al is hereby withdrawn due to the amendment.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 18: Line 10, the phrase "said first cutter" does not have antecedent basis because the claim has not set forth any first cutter. Also, it is unclear if this cutter is the same or a different cutter from the one recited on line 8. It is unclear how many cutter the system comprises in total.

Claims 15-17, 19-23,26,28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens et al in view of Cross and Huber et al.

Stevens et al disclose a system comprising an extruder for extruding a mixture, a segmenter for cutting the extrudate, a drier for drying the segments, a mill for milling to provide granules, a sieve for screening and sorting the granules. The system also can include a mixer to make an extrudable mixture. The segmenting is achieved by using a cutting means which can be a wire or knife. The dryer can be a fluid bed dryer and the extruder can be heated. ( see columns 4-5)

The segmenter and mill in the Stevens et al system are equivalent to the coarse cutting and fine cutting. The sieve is equivalent to the claimed sizing device.

Stevens et al do not disclose an extruder comprising a cutter, a second dryer downstream of the comminuting device, cutting station or cutting means, a tempering chamber, plurality of pneumatic conveying lines and bypassing lines.

Cross discloses a system for making snack product. The system comprises a pre-conditioner, and extruder, a first dryer, a first cyclone separator, a second cyclone separator, a conveyor assembly and a spraying mechanism. The system contains a cutter for cutting a cooked extrudate as it emerges from the extruder; the cutter is connected to the extruder. When the use of a second drying apparatus is not feasible, the product can be returned to the first drying apparatus for further drying. The system comprises two cyclone separators, any apparatus capable of pneumatically transferring and thus agitating the material can be used. The pieces are pneumatically transferred.

Huber et al disclose an apparatus for extrusion and dehydration. They disclose an extruder in which a rotating knife assembly is position adjacent the outlet of the die for cutting the extrudate into a convenient size. Figure 1 shows a die assembly (20) attached to the extruder containing the cutter (54) (see example 1)

It would have been obvious to one skilled in the art to use an extruder having a cutter as taught by Cross and Huber et al. to cut the extrudate into convenient size at it emerges the extrudate to make processing more efficient when using the Stevens et al system because the extrudate will have shorter length before entering further processing. The extruder disclosed in Cross and Huber et al comprises a cutter. Paragraph 38 of the specification discloses the cutter 480 is attached adjacent to the die of the extruder 460. Both the cutters in Cross and Huber extruding systems are attached adjacent to the die connected to the extruder. It would have been obvious to one skilled in the art to include a second dryer as taught by Cross in the Stevens et al system when it is desired to further dry the granular product. Adding additional dryer

depends on the type of end product made and the moisture content wanted for that product. It would have been obvious to place the dryer downstream or after the cutter when the purpose of the additional dryer is to further dry the granular product in the Stevens et al system. Stevens et al already teach a dryer for drying the segmented product. Determination of the placement of additional dryer depending on the moisture wanted for the final product would have been a result-effective variable that is well within the determination of one skilled in the art. It would also have been obvious to include a cyclone separator as taught by Cross to enable the separation of unwanted material ; one would have been motivated to add the separator to obtain a purer end product. The placement of the particular device in the system depends on what is deemed convenient and the type of product made. This placement can readily be determined by one skilled in the art without undue experimentation. It would have been obvious to by-pass the second cutter or grinder depending on the ultimate size of the end product desired. It would have been obvious to use pneumatical transfer as taught by Cross to facilitate the transferring process.

Claims 24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 18 is free of prior art. Applicant's argument is persuasive with respect to the inclusion of a grinder downstream of a second dryer. There is no disclosure or suggestion to add a grinder to the Stevens' system.

In the response filed 1/5/10, applicant argues the mill of Stevens cannot be considered a cutter or a cutting device and the segmenter cannot be considered a comminuting device. This argument is not persuasive. Stevens discloses a segmenter which divides the noodles into segments. Stevens discloses on column 4 lines 63-67 the segmenting is achieved by using a cutting means which could be a wire or a knife. Thus, the segmenter is equivalent to the claimed comminuting device that comprises a cutter. The wire or a knife is the cutter. Stevens discloses milling the segments to smaller particles. Thus, the mill functions to further cut the segments; thus, it is not seen how this cannot be considered as a cutter. With respect to claim 17, the segmenter and the mill in the Stevens' system constitute the comminuting device with a first cutter and second cutter. With respect to claims 19 and 26, the limitations are addressed in the rejection. Claim 26 recites that the extruder is heated; there is nothing about a grinder. With respect to claim 29, the claim does not set forth specific series of cutters. With respect to claim 28, the segmenter is the means for cutting that is separate from the extruder. The rejection is a combination of reference which show a means for tempering. Stevens discloses a dryer which is a means for drying. With respect to claim 32, the rejection is based on a combination of references. Huber and Cross both teach an extruder with a cutter. Stevens teaches a segmenter which is a cutting station that is separate from the extruder. The new limitation of the second dryer downstream of the comminuting device, cutter means or cutting station is addressed in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 9, 2010

/Lien T Tran/

Primary Examiner, Art Unit 1794